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U.S. District Court
Northern District of California

San Francisco Technology Inc.

Case No. 5:10-cv-02994-HRL

Plaintiff

**Stipulation to Stay Case With Respect to
Sterling International Inc. and ~~Proposed~~ Order**

vs.

[Re: Docket No. 104]

Aero Products International Inc., BP
Lubricants USA Inc., BRK Brands Inc.,
Calico Brands Inc., Cooper Lighting LLC,
Darex LLC, Dexas International Ltd., Dyna-
Gro Nutrition Solutions, Fiskars Brands Inc.,
Global Concepts Inc., Homax Products Inc.,
Kimberly-Clark Corporation, Kraco
Enterprises LLC, Lixit Corporation, Mead
Westvaco Corporation, Nutrition 21 Inc.,
Oatey Co., Optimum Technologies Inc.,
Newell Rubbermaid Inc., Schick
Manufacturing Inc., The Scotts Company
LLC, Sterling International Inc., Vitamin
Power Incorporated, Woodstream
Corporation, 4-D Design Inc.

Defendants

1 Plaintiff San Francisco Technology Inc. ("SF Tech") and defendant Sterling International Inc.
2 ("Defendant") enter into this stipulation and seek the relief set forth below.

3 1. SF Tech filed its Complaint on July 8, 2010, alleging that Defendant has falsely
4 marked articles in violation of 35 U.S.C. § 292. SF Tech asserts that it is a *qui tam* relator in this
5 case.

6 2. SF Tech had earlier filed similar Complaints in this court, asserting similar false
7 marking claims against other defendants, also asserting that it is a *qui tam* relator. Those cases are
8 styled:

9 a. *San Francisco Technology Inc. v. Adobe Systems Incorporated, et al.*, Case
10 No. 5:09-cv-06083-RS ("Adobe"), filed on December 30, 2009.

11 b. *San Francisco Technology Inc. v. The Glad Products Company, et al.*, Case
12 No. 5:10-cv-00966-JF ("Glad"), filed on March 5, 2010.

13 3. Defendant anticipates that it will challenge SF Tech's standing in this case. Defendant
14 also anticipates that it might raise challenges to personal jurisdiction and/or venue in this case.

15 4. In similar cases involving *qui tam* relators under 35 U.S.C. § 292, District Courts have
16 split on the question of whether a *qui tam* relator has standing in such cases. *See e.g., Juniper*
17 *Networks v. Shipley*, 2010 U.S. Dist. Lexis 24889, 16–17 (N.D. Cal. 2010) ("*Juniper Networks 2*")
18 (finding standing); *Pequignot v. Solo Cup Co.*, 640 F. Supp. 2d 714 (E.D. Va. 2009) ("*Pequignot 2*")
19 (finding standing); *Stauffer v. Brooks Brothers Inc.*, 615 F. Supp. 2d 248 (S.D.N.Y. 2009)
20 ("*Stauffer*") (finding a lack of standing).

21 5. The District Court's decision in *Stauffer* (finding a lack of standing) is currently on
22 appeal in the Federal Circuit (Case No. 2009-1428). That appeal has been fully briefed, and the
23 Federal Circuit panel heard oral arguments on August 3, 2010.

24 6. It is widely expected that the Federal Circuit will issue a ruling in *Stauffer* concerning
25 the standing of *qui tam* relators under 35 U.S.C. § 292. The parties to this stipulation anticipate that
26 the Federal Circuit's ruling will have a significant effect on the standing question in this case.

27 7. In light of the pending appeal in *Stauffer*, and in order to streamline the issues in
28 *Adobe* and *Glad*, Judge Seeborg of this court entered an order staying *Adobe* on April 13, 2010, and

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1 Judge Fogel of this court entered an order staying *Glad* on July 19, 2010. Those cases have been
 2 stayed until the Federal Circuit issues a decision in *Stauffer*.

3 8. In order to streamline this case and to narrow the issues that this court will be required
 4 to decide, the parties to this stipulation have reached an agreement. They hereby stipulate to stay this
 5 case until the Federal Circuit issues a decision in *Stauffer*. In exchange, Defendant agrees that it will
 6 not challenge personal jurisdiction or venue in this court. This stipulation is not intended to affect
 7 any other rights, claims, defenses, or arguments of any party. Accordingly, after the stay is lifted, this
 8 case will be litigated in this court, and Defendant may raise any defenses to SF Tech's claim other
 9 than venue or personal jurisdiction.

10 9. SF Tech previously entered into a stipulation with another defendant similar to this
 11 one, and the court granted the relief sought. *See* Docket No. 77.

12 10. The parties seek the following relief:

13 a. All proceedings in this case will be stayed with respect to Defendant until the
 14 Federal Circuit issues a decision in *Stauffer*.

15 b. SF Tech will notify this court when the Federal Circuit issues a decision in
 16 *Stauffer*. Defendant's deadline to file a response to the Complaint will be 30 days from the
 17 filing of this notice.

18 c. The stipulating parties have agreed that personal jurisdiction and venue are
 19 appropriate in the Northern District of California in this case. However, no other rights,
 20 claims, defenses, or arguments of any party are affected by this stipulation.

21
 22 In accordance with General Order No. 45.X.B., Dan Fingerman, counsel for SF Tech, attests
 23 that each other signatory listed below has concurred in the filing of this document.

24
 25 Date: August 13, 2010

Mount & Stoelker, P.C.

/s/ Dan Fingerman

Counsel for San Francisco Technology Inc.

1 Date: August 13, 2010

Abbey, Weitzenberg, Warren & Emery

/s/ Stephanie Walker
Counsel for Sterling International Inc.

4 Pursuant to stipulation, it is so ordered

5 Date: ____ August 17, 2010 ____



Magistrate Judge Howard R. Lloyd

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